

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NAVAJO NATION,

Plaintiff,

v.

ANDREW WHEELER, *et al.*,

Defendants.

No. 2:20-cv-602-MV-GJF

PLAINTIFF NAVAJO NATION’S MOTION FOR SUMMARY JUDGMENT¹

Plaintiff Navajo Nation hereby moves for summary judgment on its claims against Defendants under the Administrative Procedure Act (APA), 5 U.S.C. § 706. Plaintiff moves for an order vacating the rules titled “Definition of ‘Waters of the United States’—Recodification of Pre-Existing Rules,” 84 Fed. Reg. 56,626 (Oct. 22, 2019), and “The Navigable Waters Protection Rule: Definition of ‘Waters of the United States,’” 85 Fed. Reg. 22,250 (Apr. 21, 2020), because the rules are arbitrary and capricious and not in accordance with the law, in violation of the APA. In support of this motion, Plaintiff relies on its contemporaneously filed brief, the declarations and exhibits attached to the brief, and the administrative records for the rules, ECF Nos. 16 and 17.

¹ This filing is captioned as a motion for summary judgment, consistent with the Court’s Order Setting Briefing Schedule of Oct. 8, 2020 (ECF No. 19). However, this filing is equivalent to an appellate brief, seeking review of final agency action based on the record. *N.M. Health Connections v. U.S. Dep’t of Health & Hum. Servs.*, 946 F.3d 1138, 1155 (10th Cir. 2019) (district court review of agency action did not determine whether genuine dispute of material fact existed, but engaged in substantive review of the record to determine if the agency considered relevant factors or articulated a reasoned basis for its conclusions); *Baca v. King*, 92 F.3d 1031, 1034 n.1 (10th Cir. 1996) (district court properly applied arbitrary and capricious standard for review of agency action rather than summary judgment standard under Fed. R. Civ. P. 56).

Respectfully submitted,

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/s/ Jill Elise Grant

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* D.N.M.LR-Civ. 83.3(a) certification

Attorneys for Plaintiff Navajo Nation

CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2021, I caused the following to be filed and served upon counsel of record via the Court's CM/ECF filing system:

1. PLAINTIFF NAVAJO NATION'S MOTION FOR SUMMARY JUDGMENT
2. PLAINTIFF NAVAJO NATION'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
3. DECLARATION OF RONNIE BEN
4. DECLARATION OF IAN FISHER
5. EXHIBITS 1 to 13

/s/ Jill Elise Grant